
EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU INVESTMENTS LLC * December 10, 2020
*
VS. * CIVIL ACTION NOS.
*
DELL TECHNOLOGIES INC. ET AL * W-20-CV-473 thru 482, 485, 486

BEFORE THE HONORABLE ALAN D ALBRIGHT
TELEPHONIC SCHEDULING CONFERENCE

APPEARANCES:

For the Plaintiff: James L. Etheridge, Esq.
Brett Aaron Mangrum, Esq.
Brian Matthew Koide, Esq.
Jeffrey Huang, Esq.
Ryan Scott Loveless, Esq.
Etheridge Law Group, PLLC
2600 E. Southlake Blvd., Suite 120-324
Southlake, TX 76092

Mark D. Siegmund, Esq.
Law Firm of Walt Fair, PLLC
1508 N. Valley Mills Drive
Waco, TX 76710

For the Defendants: Barry K. Shelton, Esq.
Shelton Coburn LLP
311 RR 620 S, Suite 205
Austin, TX 78734-4775

Benjamin Hershkowitz, Esq.
Brian Rosenthal, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Ave.
New York, NY 10166

Jaysen S. Chung, Esq.
Gibson Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105

1 Court Reporter: Kristie M. Davis, CRR, RMR
2 PO Box 20994
3 Waco, Texas 76702-0994
4 (254) 340-6114

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09:28 1 (December 10, 2020, 10:01 a.m.)

10:01 2 DEPUTY CLERK: Court calls Waco Case 20-CV-473, 474, 475,
10:01 3 476, 477, 478, 479, 480, 481, 482, 485 and 486, WSOU
10:02 4 Investments LLC versus Dell Technologies Inc., et al for a
10:02 5 telephonic discovery hearing.

10:02 6 THE COURT: If I could hear announcements from counsel,
10:02 7 please, starting with the plaintiff.

10:02 8 MR. SIEGMUND: Good morning, Your Honor. This is Mark
10:02 9 Siegmund for plaintiff WSOU Investments LLC, and with me this
10:02 10 morning I have Mr. Jim Etheridge, Ryan Loveless, Mr. Brian
10:02 11 Koide, Jeff Huang and Brett Mangrum, and myself and some of the
10:02 12 other individuals I just listed will be speaking depending on
10:02 13 what the Court needs.

10:02 14 THE COURT: Okay. And for defendants?

10:02 15 MR. SHELTON: Good morning, Your Honor. This is Barry
10:02 16 Shelton of Shelton Coburn LLP. We have four client
10:02 17 representatives today, Tom Brown and Ann-Marie Dinius for Dell
10:02 18 and Danielle Coleman and Daniel Lin for VMware, and from the
10:02 19 firm of Gibson, Dunn & Crutcher Brian Rosenthal who will be
10:03 20 arguing this morning for defendants, Ben Hershkowitz and Jaysen
10:03 21 Chung.

10:03 22 THE COURT: Good morning all. Good morning to any client
10:03 23 representatives who have taken the time to attend and with my
10:03 24 appreciation for you doing so.

10:03 25 We will start with the issue of the defendants' concerns

10:35 1 second. As those of you who appear in front of me on Zoom
10:35 2 know, I've got three or four iPads going at any one time during
10:35 3 a hearing. So it takes me a second to catch up here. I
10:35 4 apologize.

10:35 5 Okay. Let's turn next to the issue of infringing
10:35 6 products. And I'm not sure who's going to argue this on behalf
10:35 7 of defendants, but I'm happy to hear from whoever it is.

10:35 8 MR. ROSENTHAL: It's Brian Rosenthal again, Your Honor.
10:35 9 And if the Court will indulge me, can I just make one comment
10:35 10 about the previous discussion just before we move on?

10:35 11 THE COURT: You can say whatever you'd like.

10:36 12 MR. ROSENTHAL: Thank you, Your Honor. The only thing I
10:36 13 wanted to mention is we don't take issue with the quantity, the
10:36 14 number of pages. We have very, very specific requests here.
10:36 15 We're not saying they didn't, you know, put in a lot of work.
10:36 16 We're not saying they didn't generate a lot of paper. It's
10:36 17 just about a couple of limitations that are key limitations of
10:36 18 these patents, and what we're looking for, to be very plain, is
10:36 19 not just some prose where they write some stuff about how our
10:36 20 products work. We just want to understand for these key
10:36 21 limitations what are they actually accusing. It is the what.
10:36 22 It's not the why. What do you identify as being the ratio?
10:36 23 What do you identify as being the mean cause? What do you
10:36 24 identify as being the group identifier? So that we know now
10:36 25 where the claim construction issues lie. That is our request.

10:36 1 And to the extent that wasn't clear, I just wanted to make that
10:36 2 clear.

10:36 3 So with respect to the accused products, there are sort of
10:37 4 myriad issues with the identification of accused products in
10:37 5 the infringement contentions. Let me just articulate what
10:37 6 those are. For one of the patents, the first one that I talked
10:37 7 about, the '129 patent, there's an issue which is that they
10:37 8 identify two products, OME and OMNM, and they only allege
10:37 9 certain claim elements for the OME product, but for the OMNM
10:37 10 product -- OMNM product, they don't even allege that certain
10:37 11 elements are met by that product. So we don't believe that
10:37 12 that's a proper identification of an accused product with
10:37 13 respect to the '129 patent.

10:37 14 More generally, this is the second concern that we have,
10:38 15 for many of the patents there's just an identification of broad
10:38 16 category of products or of an exemplary product and then it
10:38 17 says something like products including the end switch or
10:38 18 product including Dell Edge Gateway or something like that.
10:38 19 And because -- there's a twin problem here. Because they
10:38 20 haven't articulated what the actual infringement theory is,
10:38 21 we're not in a position where we can do what you might
10:38 22 ordinarily do in a case where you articulate an infringement
10:38 23 theory, you articulate a representative product, and then we
10:38 24 can tell based on that which other products have the same
10:38 25 functionality. We can't do that because we don't know what the

10:38 1 functionality is that's being accused. And then on top of
10:38 2 that, they have this very vague "and other products" sort of
10:38 3 language. And so we would like to have from them an
10:38 4 identification of at least representative model number
10:39 5 products. This is all stuff that's available online. We know
10:39 6 that they've tested certain products because they have
10:39 7 screenshots and say they've done product testing. We think
10:39 8 that we ought to have from them a specific identification of
10:39 9 model numbers. That is not to say that they are going to be
10:39 10 for all time bound to only be able to assert the claims against
10:39 11 those model numbers. If discovery yields information that
10:39 12 there's other products that have the same or similar
10:39 13 functionality, that's a different story, but at this moment in
10:39 14 time we would like to have from them some more specific
10:39 15 identification by model number of the products that they have
10:39 16 identified as allegedly infringing.

10:39 17 THE COURT: Okie dokie. Mr. Siegmund, who will be
10:39 18 speaking on behalf of plaintiff?

10:39 19 MR. SIEGMUND: Jim Etheridge will be on this one, Your
10:40 20 Honor.

10:40 21 THE COURT: Okay. Very good.

10:40 22 MR. ETHERIDGE: Good morning, Your Honor. I'll just give
10:40 23 you a high level view there. I think the bottom line here is
10:40 24 that, you know, discovery in a patent infringement suit
10:40 25 includes discovery that relates to the technical operation of

10:40 1 the accused products that includes the identity and technical
10:40 2 operation of products reasonably similar. I believe in every
10:40 3 claim chart we've identified what we think is the infringing
10:40 4 products, but it certainly isn't a complete full list. I mean,
10:40 5 we are not -- if we were to say, for example, we think the L100
10:40 6 series infringes because it includes these elements --

10:40 7 THE COURT: Well, let me -- Mr. Etheridge, let me
10:40 8 interrupt you. I believe I just heard counsel for the
10:40 9 defendants tell me that you have not even identified a specific
10:40 10 representative product as in not just a line of products but a
10:40 11 specific product. So is he correct on that? In other words,
10:41 12 you know, you can say, all Sony TVs, but Sony TVs operate
10:41 13 differently, and if you -- I think at a minimum you ought to
10:41 14 have to say this Sony TV actually has the infringing circuitry
10:41 15 in it so that the defendant has an idea of the specific
10:41 16 circuitry that you're accusing. So for each of the claims that
10:41 17 you are currently asserting, have you identified a specific
10:41 18 product?

10:41 19 MR. ETHERIDGE: Yes. I believe we have. And even in the
10:41 20 example he just gave that the Dell OME, we point out in the PIC
10:41 21 that the Dell OME can be integrated with open management
10:41 22 network manager, which is OMNM, to view the networking
10:41 23 information. So they're clearly on notice of what we're
10:41 24 talking about, and we've named an exemplary product or an
10:41 25 exemplary means to get there. Once the discovery is produced,

10:41 1 then, sure. There'll be more details. Maybe products will be
10:42 2 excluded, additional products added, but what I don't want to
10:42 3 see happen here, and I've seen defendants try to do this
10:42 4 before, is by forcing you to name a particular product
10:42 5 immediately at the beginning, they try to limit all discovery
10:42 6 to that product only.

10:42 7 THE COURT: Well, let me make sure you understand. That
10:42 8 has never happened in my court successfully at least. So, you
10:42 9 know, I have a very -- as everyone -- well, most of you who
10:42 10 have been on this call know, I have a very expansive view
10:42 11 towards discovery. Let me make clear that if when you come to
10:42 12 me you can articulate to me why you need some -- if the
10:42 13 defendant doesn't want to give it, why you are entitled to it.
10:42 14 You're almost always going to be successful. If the defendant
10:42 15 comes to me and says, we need this discovery from the plaintiff
10:42 16 and they can explain why they need it, they're going to be
10:42 17 successful. So -- but that being said -- so I don't want the
10:43 18 plaintiffs to be concerned that the infringement contentions
10:43 19 can be successfully used against the plaintiff for -- to deny
10:43 20 discovery. And this is -- these are initial infringement
10:43 21 contentions. They are initial invalidity contentions. Both
10:43 22 are going to get modified after the Markman. I know how all
10:43 23 this stuff works generally speaking. And so my concern at the
10:43 24 moment where we're at procedurally is I want to make sure that
10:43 25 the plaintiffs have -- the plaintiff has articulated with

10:43 1 sufficient specificity products so that the defendants as they
10:43 2 are preparing for the Markman and preparing to move forward
10:43 3 after that can say that the plaintiffs must mean this in terms
10:44 4 of the allegations of infringement because we can tell
10:44 5 specifically how the functionality of this specific product
10:44 6 works. And so I think it's fair for them to have that.

10:44 7 Now, again I'll ask you. Have you provided sufficient --
10:44 8 have you provided, in your opinion, products with specificity
10:44 9 that the defendants can rely on for each claim that you have
10:44 10 said that you want to pursue?

10:44 11 MR. ETHERIDGE: Yes. I believe we've identified at least
10:44 12 a specific product. In many instances we've identified
10:44 13 multiple products or a line of products. And the reason I
10:44 14 raised my concern is because in each of the columns you will
10:44 15 see that Dell has said that, you know, WSOU's only identified
10:44 16 the smart fabric operating system, and at a minimum they should
10:44 17 identify the -- and the discovery should be limited to the
10:44 18 model number. So I'm happy to go through each of our -- let
10:45 19 each of my guys tell you what product has been accused in every
10:45 20 one of the products, but they have all been -- they have all
10:45 21 been named. I don't think it's necessary at this point to give
10:45 22 a serial number or a particular model number because only Dell
10:45 23 knows how they've configured each of those, but I think they're
10:45 24 definitely on notice and at least the product or line of
10:45 25 products have been named in every instance.

10:45 1 THE COURT: Well, here's what I'm going to do on this, and
10:45 2 then I'll hear from the defense counsel if they need more than
10:45 3 this, and they may. But, you know, what I'm -- what I want you
10:45 4 all to do is get back together after the call, have the
10:45 5 defendants go through and provide you with a specific list --
10:45 6 if they haven't. I think they probably have -- of any claim
10:45 7 that you've asserted, any -- I was going to say independent.
10:45 8 It could be independent or dependent, but any individual claim
10:45 9 that they've asserted and verify that you have provided them
10:46 10 with specific products that they can identify. And if there
10:46 11 are any that -- if there are any claims after that meet and
10:46 12 confer that the defendants feel that you have not done an
10:46 13 adequate job on after you discuss it, they can send you a list
10:46 14 of the claim -- the patent and the claim numbers they think you
10:46 15 are deficient on. You can fill in a copy. Just -- I mean,
10:46 16 this is very short. This is like a memo. You can identify on
10:46 17 that document what you have identified as a representative
10:46 18 product. You all send me that document. I'll review it. And
10:46 19 if I think that the products that have been identified by the
10:46 20 plaintiff are insufficient, then I'll order additional -- I'll
10:47 21 order you to do additional work.

10:47 22 So let me go back to the defendant for a second. Beyond
10:47 23 that, what else did you want me to do?

10:47 24 MR. ROSENTHAL: Your Honor, I think that's a good
10:47 25 solution. I just wanted to respond just to the notion that

10:47 1 indeed specific products have been identified for every patent.
10:47 2 We don't believe that to be the case. And just as an example,
10:47 3 it's in the joint submission. You know, the '536 patent
10:47 4 they've just identified Dell power connectivity 500 series
10:47 5 which is a number of switches.

10:47 6 For the '435 patent they've identified power switch N
10:47 7 series switches which is a number of switches.

10:47 8 THE COURT: Well, let me interrupt you and say, here's the
10:47 9 way I see that is if the plaintiff's position is that all of
10:47 10 those series of switches infringe that claim term, that's
10:48 11 adequate. If -- and that's why I want you guys to get back and
10:48 12 meet and confer on this since I've spoken to you, and I'm happy
10:48 13 to keep working through this with you. I'm happy to be as
10:48 14 involved as you need me to be, but if the plaintiff's
10:48 15 position -- if the plaintiff has said, this series of Dell
10:48 16 products infringe, then I think it's fair for the -- for Dell
10:48 17 or whichever defendant to believe that for that claim that all
10:48 18 the series does. If that's not what the plaintiff is meaning
10:48 19 to say, if they've tested a specific representative product and
10:48 20 that's the one they're sure does, well, then they can narrow it
10:48 21 down to that. So I'm just trying to get for the defendant as
10:48 22 much specificity as possible with respect to a product, a
10:48 23 specific product that the plaintiff believes infringes a
10:49 24 specific -- each specific claim. So hopefully that helps you
10:49 25 out on that.

10:49 1 MR. ROSENTHAL: It does, Your Honor. That's great
10:49 2 guidance and we will work with plaintiff to try to do that.
10:49 3 And that is what we are looking for. You know, for instance,
10:49 4 there are -- with respect to all of the allegations against
10:49 5 VMware, for all of those there's no reference to any particular
10:49 6 version of the software. If they have tested or examined all
10:49 7 of the versions and assert infringement of all of the versions,
10:49 8 then we'd like to know that. If they're only asserting
10:49 9 presently infringement against one of the versions based on
10:49 10 what they've looked at, we'd like to know that. That does have
10:49 11 an impact on our analysis of what's actually at issue because
10:49 12 we're sort of -- you know, we're guessing in the dark about
10:49 13 what the infringement contention is. It's important for us to
10:49 14 at least have something to grab onto to say, okay. This is
10:49 15 what the product is. So with that in mind, we will proceed as
10:50 16 Your Honor ordered, and hopefully we'll be able to resolve the
10:50 17 issue, and if not, we will send that memo in.

10:50 18 THE COURT: Okay. And one more thing -- but let me state
10:50 19 one more thing. Generally speaking, I know how the world
10:50 20 works. I know -- I've understood what you all have argued this
10:50 21 morning, but just so you know, my belief is that in the
10:50 22 infringement contentions I know in the real world they are, but
10:50 23 as a legal matter, the legal contentions are not part -- the
10:50 24 infringement contentions, invalidity contentions are not part
10:50 25 of the Markman process. So that -- I just want everyone to

10:50 1 understand that from my perspective, and it may be right or
10:50 2 wrong, but, in other words, the need for infringement
10:50 3 contentions or invalidity contentions to assist someone in
10:50 4 coming up with what they believe a Markman claim term should
10:51 5 mean, I don't think -- I disagree with that. I think I'm
10:51 6 supposed to be doing the claim construction as a matter of law
10:51 7 based on what the claim says and the intrinsic evidence which
10:51 8 is agnostic to whatever the products are that are out there for
10:51 9 the infringement contentions. So I just wanted everyone to
10:51 10 understand that's my philosophy as we move forward. That being
10:51 11 said, again, I think it is absolutely fair for the defendants
10:51 12 to have a clear understanding through a product being
10:51 13 identified as to what the plaintiff's position is with respect
10:51 14 to infringement of the claims they want to assert. So
10:51 15 hopefully -- I just -- I wanted that on record so you all had
10:51 16 my philosophy on how we do things if it's helpful, and I don't
10:51 17 know if it is or not.

10:51 18 So is there anything else -- since it was the defendants
10:52 19 who asked for this hearing, is there anything else the
10:52 20 defendants would like me to take up at this time?

10:52 21 MR. ROSENTHAL: Speaking for myself, Your Honor -- this is
10:52 22 Brian Rosenthal -- no, other than to mention as I said at the
10:52 23 outset of this call, many of the issues that we raised in our
10:52 24 letters, in our joint chart and in our discussion today overlap
10:52 25 substantially with some of what we believe to be fatal issues

10:52 1 with the allegations themselves in the complaint. We have
10:52 2 completed our briefing on the motion to dismiss and requested a
10:52 3 hearing, and we believe that if we can get a hearing at Your
10:52 4 Honor's convenience, of course, we believe that a number of
10:52 5 these issues will be fleshed out in significant detail and we
10:52 6 think resolved. So I just wanted to mention that there is a
10:52 7 great deal of overlap.

10:52 8 THE COURT: Understood. But I appreciate that. That's
10:53 9 helpful. So what I will do -- what I will task you all to do
10:53 10 is to -- we definitely should have the hearing on that motion
10:53 11 to dismiss before the end of the year before Christmas.
10:53 12 Depending on what the Circuit does, I may be in trial for two
10:53 13 weeks in January or I might not. So but we should -- we should
10:53 14 plan on me being in trial. Just so you know my schedule, even
10:53 15 though you probably don't care, I've got a week of Markmans. I
10:53 16 think we have 15 Markmans set the first week of January, and
10:53 17 then I have two jury trials that will take up the rest of the
10:53 18 month, but I want to get this done before then. So if the
10:53 19 briefing is finished, then work with my clerks to get a Zoom
10:53 20 call or -- I don't care. I think my court reporter prefers
10:53 21 Zoom. She can hear better. But let's set up a Zoom or
10:54 22 telephonic conference before we all get away for Christmas, and
10:54 23 you just let my clerks know when that would work for you guys.

10:54 24 Anything else from the defendants?

10:54 25 MR. ROSENTHAL: No. Thank you, Your Honor.

10:54 1 THE COURT: Anything else, Mr. Siegmund, for the
10:54 2 plaintiff?

10:54 3 MR. SIEGMUND: No, sir. That's all. Thank you very much
10:54 4 Judge.

10:54 5 THE COURT: Okay. And by the way, if I haven't said this
10:54 6 before, as I try to make clear, I think it's my role to stay
10:54 7 involved in these kind of disputes. I get angry only -- I
10:54 8 don't know that I get angry about anything, but I'm unhappy
10:54 9 only if people aren't continuing to involve me and letting
10:54 10 these things fester. So I very much appreciate you all
10:54 11 bringing this to my attention quickly. We'll get these issues
10:54 12 resolved quickly, and we'll get the motion to dismiss resolved
10:54 13 by the end of the year.

10:54 14 But it's unlikely I will see most or any of you before the
10:55 15 end of the year, given our current situation, in person. So
10:55 16 you all have a wonderful month and Christmas if I don't talk to
10:55 17 you again before our hearing. So have a good day. Take care.

10:55 18 (Hearing adjourned at 10:55 a.m.)
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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
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8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me this 11th day of December 2020.

12
13 /s/ Kristie M. Davis
14 KRISTIE M. DAVIS
15 Official Court Reporter
16 800 Franklin Avenue
17 Waco, Texas 76701
18 (254) 340-6114
19 kmdaviscsr@yahoo.com
20
21
22
23
24
25